

## Department of Veterans Affairs

## § 3.22

(b) Where the veteran dies on or after October 1, 1982, the surviving spouse may be paid death pension or dependency and indemnity compensation for the month in which the veteran died at a rate equal to the amount of compensation or pension which would have been payable to the veteran for that month had death not occurred, but only if such rate is equal to or greater than the monthly rate of death pension or dependency and indemnity compensation to which the surviving spouse is entitled. Otherwise, no payment of death pension or dependency and indemnity compensation may be made for the month in which the veteran died.

(Authority: 38 U.S.C. 5111(c))

(c)(1) Where a veteran receiving compensation or pension dies after December 31, 1996, the surviving spouse, if not entitled to death compensation, dependency and indemnity compensation, or death pension for the month of death, shall be entitled to a benefit for that month in an amount equal to the amount of compensation or pension the veteran would have received for that month but for his or her death.

(2) A payment issued to a deceased veteran as compensation or pension for the month in which death occurred shall be treated as payable to that veteran's surviving spouse, if the surviving spouse is not entitled to death compensation, dependency and indemnity compensation or death pension for that month and, if negotiated or deposited, shall be considered to be the benefit to which the surviving spouse is entitled under paragraph (c)(1) of this section. However, if such payment is in an amount less than the amount of the benefit under paragraph (c)(1) of this section, the unpaid difference shall be treated in the same manner as an accrued benefit under § 3.1000 of this part.

(Authority: 38 U.S.C. 5310(b))

[48 FR 34471, July 29, 1983, as amended at 62 FR 35422, July 1, 1997; 64 FR 30392, June 8, 1999]

### § 3.21 Monetary rates.

The rates of compensation, dependency and indemnity compensation for surviving spouses and children, and

section 306 and old-law disability and death pension, are published in tabular form in appendix B of the Veterans Benefits Administration Manual M21-1 and are to be given the same force and effect as if published in the regulations (title 38, Code of Federal Regulations). The maximum annual rates of improved pension payable under Pub. L. 95-588 (92 Stat. 2497) are set forth in §§ 3.23 and 3.24. The monthly rates and annual income limitations applicable to parents' dependency and indemnity compensation are set forth in § 3.25.

CROSS REFERENCES: Section 306 pension. See § 3.1(u). Old-law pension. See § 3.1(v). Improved pension. See § 3.1(w).

[44 FR 45932, Aug. 6, 1979]

### § 3.22 DIC benefits for survivors of certain veterans rated totally disabled at time of death.

(a) Even though a veteran died of non-service-connected causes, VA will pay death benefits to the surviving spouse or children in the same manner as if the veteran's death were service-connected, if:

(1) The veteran's death was not the result of his or her own willful misconduct, and

(2) At the time of death, the veteran was receiving, or was entitled to receive, compensation for service-connected disability that was:

(i) Rated by VA as totally disabling for a continuous period of at least 10 years immediately preceding death;

(ii) Rated by VA as totally disabling continuously since the veteran's release from active duty and for at least 5 years immediately preceding death; or

(iii) Rated by VA as totally disabling for a continuous period of not less than one year immediately preceding death, if the veteran was a former prisoner of war.

(Authority: 38 U.S.C. 1318(b))

(b) For purposes of this section, "entitled to receive" means that the veteran filed a claim for disability compensation during his or her lifetime and one of the following circumstances is satisfied:

(1) The veteran would have received total disability compensation at the